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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 James Robert Cobler,
10 Plaintiff,

No. CV-19-00348-TUC-RM

ORDER

11 v.

12 United States of America, et al.,
13 Defendants.
14

15 On January 12, 2022, the Court denied Defendant United States of America's
16 Motion for Summary Judgment. (Doc. 60.) The parties' Joint Proposed Pretrial Order
17 was due thirty days later (*see* Doc. 38), but to date, the parties have not filed their Joint
18 Proposed Pretrial Order, nor have they sought an extension of the deadline for doing so.
19 A settlement conference is set for March 10, 2022 before Magistrate Judge Leslie A.
20 Bowman. (Doc. 62.) Pending before the Court is Plaintiff's Motion to Appoint Counsel
21 for Limited Purpose. (Doc. 61.)

22 **I. Motion to Appoint Counsel**

23 Plaintiff asks the Court to appoint him counsel to assist him at the March 10, 2022
24 settlement conference. (Doc. 61.) He avers that defense counsel does not object to the
25 request. (*Id.*)

26 There is no constitutional right to the appointment of counsel in a civil case. *See*
27 *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). In
28 proceedings *in forma pauperis*, the court may request an attorney to represent any person

1 unable to afford one pursuant to 28 U.S.C. § 1915(e)(1), but courts lack the authority “to
 2 make coercive appointments of counsel” under that provision. *See Mallard v. U.S. Dist.*
 3 *Ct. for S. Dist. of Iowa*, 490 U.S. 296, 310 (1989). The appointment of counsel under 28
 4 U.S.C. § 1915(e)(1) is required only when “exceptional circumstances” are present.
 5 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A determination with respect to
 6 exceptional circumstances requires an evaluation of the likelihood of success on the
 7 merits as well as the ability of the plaintiff “to articulate his claims *pro se* in light of the
 8 complexity of the legal issues involved.” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d
 9 1328, 1331 (9th Cir. 1986)). “Neither of these factors is dispositive and both must be
 10 viewed together before reaching a decision.” *Id.* (quoting *Wilborn*, 789 F.2d at 1331).

11 Having considered the aforementioned elements, the Court finds that exceptional
 12 circumstances do not warrant the appointment of counsel at this time. Although Plaintiff
 13 does not address in his Motion his likelihood of success on the merits of his claims, the
 14 Court finds that Plaintiff does have at least some likelihood of success, as evidenced by
 15 the denial of Defendant’s Motion for Summary Judgment. Accordingly, the first factor
 16 weighs in favor of the appointment of counsel. However, the second factor does not
 17 weigh in favor of the appointment of counsel at this time. Plaintiff has demonstrated an
 18 ability to sufficiently articulate his claims *pro se*, and he does not explain in his Motion
 19 why he requires the assistance of counsel during the settlement conference. Accordingly,
 20 the Court will deny Plaintiff’s Motion for Appointment of Counsel without prejudice.

21 **II. Joint Proposed Pretrial Order**


22 As set forth in the Court’s Scheduling Orders, the parties’ Joint Proposed Pretrial
 23 Order was due within thirty days after the Court’s resolution of dispositive motions. (*See*
 24 *Docs. 16, 23, 26, 34, 38.*) It is the parties’ responsibility to move for extensions of the
 25 deadlines set forth in the Court’s Scheduling Orders and to establish good cause for any
 26 requested extensions. The parties have failed to do so with respect to the deadline for
 27 filing a Joint Proposed Pretrial Order. However, given the upcoming settlement
 28 conference, the Court will *sua sponte* extend the deadline.

1 **IT IS ORDERED** that Plaintiff's Motion to Appoint Counsel (Doc. 61) is **denied**
2 **without prejudice.**

3 **IT IS FURTHER ORDERED** that the parties shall submit a Joint Proposed
4 Pretrial Order by **April 11, 2022**, if they do not reach a settlement prior to that date.

5 Dated this 24th day of February, 2022.

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Honorable Rosemary Márquez
United States District Judge